IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CROW ROOFING & SHEET METAL, INC.,	)	No. 63173-0-I
Appellants/Cross-Respondents,	)	
v.	)	
JULIUS THIRY and KATHERIE J. THIRY, husband and wife, and the marital community composed thereof; and JULIUS THIRY and KATHERINE J. THIRY, Trustee of the THIRY REVOCABLE LIVING TRUST,	) s	UNPUBLISHED OPINION
Respondents/Cross Appellants.	)	FILED: May 3, 2010

Schindler, J. — Julius and Katherine Thiry contracted with Crow Roofing & Sheet Metal, Inc. (Crow Roofing) to install a slate roof on their home. The trial court ruled the Thirys were entitled to an offset of $57,000 for the cost to repair the roof against the outstanding balance owed to Crow Roofing. The court also ruled Crow Roofing was not entitled to prejudgment interest and the Thirys were entitled to reasonable attorney fees and costs. On appeal, Crow Roofing asserts substantial evidence does not support the trial court's finding that it breached the terms of the contract or the cost of repair was $57,000. Crow Roofing also asserts that the court erred in determining it was not entitled to

prejudgment interest and the Thirys were entitled to attorney fees as the prevailing party. We conclude substantial evidence supports the trial court's findings that Crow Roofing breached the contract and the reasonable cost of repair was $57,000. However, the court's decision to not award prejudgment interest to Crow Roofing on the remaining balance owed was erroneous. Consequently, on remand, the court must decide whether either party is the substantially prevailing party, and if so, apply the proportionality approach of Marassi v. Lau, 71 Wn. App. 912, 859 P.2d 605 (1993), overruled on other grounds by, Wachoria SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 490-92, 200 P.3d 683 (2009).

FACTS

In spring of 2005, Julius and Katherine Thiry (collectively, "Thiry") decided to replace the 8,500 square foot roof on the home they had lived in for 15 years. Thiry contacted Crow Roofing to solicit a bid to replace the existing roof with a slate roof. Thiry had previously hired Crow Roofing to repair the roofs on some commercial properties he owns. Crow Roofing initially submitted a bid to install a manufactured slate roof. Crow Roofing later submitted a revised bid for a natural slate roof. Thiry incorporated a list of sixteen provisions he copied from a competing bid he had received from another roofing company into Crow Roofing's contract for the revised bid. These additional provisions included requirements that (1) "[a]ll flashings to be 16 oz[.] copper", (2) copper fasteners must be used, and (3) Crow Roofing must fabricate and install custom copper

flashing to all eaves and gables to provide efficient water-shedding. Crow Roofing agreed to the additional terms in the revised contract. On June 6, 2005, Thiry and Crow Roofing entered into a contract to remove the home's existing roof and install a natural slate roof for $135,000 plus tax.

After the contract was executed, Thiry accepted Crow Roofing's additional bid to install attic ventilators and a copper weathervane. With the addition of these items, the total contract price was $152,416.83. Thiry paid a deposit of $50,000. The parties agreed that Thiry would pay the remaining balance of $102,416.83, plus tax in two payments after completion.

Crow Roofing began installing the roof in June 2005. While installing the roof, a worker stepped through a water barrier causing interior water damage. Thiry's homeowners' insurance carrier, Vigilant Insurance Company, paid Thiry $54,000 for the interior water damage. Except for installation of the weathervane and replacement of several loose tiles, Crow Roofing substantially completed the project by mid-December 2005. The project was completed in March 2006.

When Thiry refused to pay the balance due, Crow Roofing recorded a materialmen's lien on April 10, 2006. In September 2006, Crow Roofing filed a lawsuit to foreclose on the lien.[1] Crow Roofing also sought damages for the amount due under the contract plus interest. Thiry asserted a counterclaim for

[1] Crow Roofing later amended its complaint, to reflect Thiry's transfer of ownership of the home to a trust by naming the Trust as a defendant.

breach of contract. Thiry alleged Crow Roofing failed to comply with the contract and performed defective workmanship. Thiry also claimed that the defective roof installation caused significant water damage and created an "unsightly" roof that would have to be partially removed and reinstalled.

Vigilant intervened and sought subrogation from Crow Roofing for the amount paid to Thiry to repair the interior of the house. Prior to trial, Crow Roofing and Vigilant entered into a settlement agreement. Crow Roofing paid Vigilant $45,000 and Vigilant stipulated to dismissal of its claims. Crow Roofing then filed a motion for partial summary judgment seeking dismissal of Thiry's claim for interior water damage. The court granted the motion. The court ruled that the only issue for trial was Crow Roofing's lien claim and Thiry's counterclaim for repair and replacement of the roof.

> The only issues remaining for trial will be Crow Roofing & Sheet Metal's claim for payment and /or lien foreclosure and the Thirys' counterclaim for repair and /or replacement of the roof itself. No claims for damage outside of the roof itself remain for trial.

During the three-day bench trial, the court heard testimony from the President of Crow Roofing, Carolyn Vares, and Julius and Katherine Thiry. Crow Roofing also presented the testimony of two employees who worked on the project, Charles Trichler and John Flanagan, and a roofing expert, Raymond Wetherholt. Thiry presented the expert testimony of Bryce Given.

The court found that Crow Roofing breached the contract by performing substandard work in several respects and Thiry was entitled to an offset for the

cost of repair against the remaining contract balance owed. Specifically, the court found that Crow Roofing failed to detect a warped rafter tail when it removed the old roof and installed the new one, resulting in curvature of the roofline. The court further found that the copper flashing and copper finish work were improperly installed and unsightly. The court also found that the use of wood, instead of copper transitional flashing in places where the angle of the roof changes, was also a breach of the contract. In addition, the court found that Crow Roofing failed to use the type of fasteners for the copper flashing that were required by the contract.[2]

The court determined that the reasonable cost to repair the roof was $57,000, and Thiry was entitled to offset $57,000 against the balance due of $102,416 plus tax. The court denied Crow Roofing's request for prejudgment interest on the unpaid contract amount owed. The court later ruled that Thiry was the substantially prevailing party and awarded him attorney fees and costs of $66,417. The final judgment awarded Thiry $26,072. Crow Roofing appeals.

ANALYSIS

I. Breach of Contract and Defective Workmanship

Crow Roofing challenges a number of the trial court's findings of fact and conclusions of law related to breach of contract and defective workmanship. Where a court has evaluated evidence in a bench trial, appellate review is

[2] Some other breach of contract claims Thiry raised at trial and mentions in his appeal brief were rejected by the trial court, including Thiry's claim that the slate is the wrong color. The court also ruled that Thiry's claim related to slanting tiles on one part of the roof was not an issue because Crow Roofing eventually agreed and removed and reinstalled the tiles.

limited to determining whether the findings are supported by substantial evidence and whether the findings support the conclusions of law. Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 242-43, 23 P.3d 520 (2001). The substantial evidence standard is defined as the "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." Sunnyside Valley Irrig. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). This court's review is deferential. We view the evidence and all reasonable inferences in the light most favorable to the prevailing party. Korst v. McMahon, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006). The appellate court does not review credibility determinations. Miles v. Miles, 128 Wn. App. 64, 70, 114 P.3d 671 (2005). And where there is substantial evidence, this court will not substitute its judgment for that of the trial court "even though we might have resolved a factual dispute differently." Korst, 136 Wn. App. at 206.[3]

A. Warped Rafter Tail

Crow Roofing argues that the court erred in finding breach of contract based on its failure to detect and repair a warped rafter tail that created undulation in a four-to-five foot section of the roofline. As explained by Thiry's expert witness, a rafter is a part of the underlying structure underneath the "decking" or the surface to which the roof is attached. After removing the

[3] Crow Roofing filed two motions under RAP 9.6 and RAP 9.11 to allow additional evidence on appeal. We deny the motions. However, we note that Thiry does not dispute, and it is clear from the record, that he intended to pursue the remedy of replacement as an alternative to repair. Thiry also does not dispute the fact that contractor Bob Westlake was not identified as an expert witness. Additional proof of these facts is not needed to "fairly resolve the issues on review . . . ." RAP 9.11(a)(1).

existing shake roof, Crow Roofing agreed to:

> [t]horoughly inspect the decking for signs of deterioration or dry rot. As the condition of the decking cannot be determined prior to roof removal, we will replace decking as necessary on a time and materials basis . . . .

Crow Roofing argues that because a rafter is not technically a part of the decking, but instead lies underneath the decking, it had no obligation to detect or correct the warped rafter tail. Relying on the contract language that strongly "advises" Thiry to consult a structural engineer to "verify the structure can handle the weight of this system," Crow Roofing contends that it was Thiry's responsibility to detect the warped rafter tail.

But Thiry's expert Given testified that the warped rafter tail "would have been identifiable or should have been identifiable upon an inspection" of the decking by Crow Roofing and "[t]hey need to put their roofing onto a flat surface." In Given's opinion, detection of the warped rafter was within the scope of Crow Roofing's duty to inspect the decking for deterioration.[4]

If detection of the warped rafter tail was within the scope of its duty under the contract, Crow Roofing asserts that it might have been difficult or impossible to inspect because of the overhanging trees on that part of the roof. However, it appears from the record, that the trees were tied back so that Crow Roofing could install the roof. And the record does not show that Crow Roofing raised any issue below regarding its ability to "[t]horoughly inspect the decking"

[4] Moreover, the contract provision directing Thiry to consult an engineer about the weight of the new roof appears to have nothing to do with detecting a warped rafter tail.

because of overhanging trees.

Crow Roofing does not challenge the court's finding that the roofline is partly uneven, and one of the Crow Roofing employees admitted that the curved portion of the roofline "stands out." Nonetheless, Crow Roofing contends that the court erred in including the cost of repairing this defect in the offset because the testimony did not establish that the warped rafter tail compromised the performance of the roof. But according to Given's expert testimony, although the "extreme undulation" did not affect the function of the roof, it was a "cosmetic" defect that was "not within the standard of the industry." Crow cites no authority supporting the proposition that its failure to perform in accordance with the terms of the contract is not compensable because the failure creates only an aesthetic defect. The court's finding that the warped rafter tail is a defect that falls below industry standards is supported by the testimony.

B. Aesthetics

In a similar vein, Crow Roofing argues that the court erred in finding that aesthetics were an important consideration in the contract because there is no aesthetic clause in the contract, nor any other provision that allowed Thiry to reject the roof based on appearance. At the conclusion of the testimony, the court stated that contrary to the implication that only functionality and not aesthetics were important, "it seems like aesthetics were the most important consideration of this whole contract." The court went on to explain that based on the testimony describing the difficulty of working with slate, slate would not be

used for a roof "but for the aesthetic effect." Consistent with the court's observation, the findings state that the parties "discussed the 'look' of the roof, its durability, and the materials to be used," and that "[s]late was chosen by Defendants to give the house a particular appearance." The testimony supports the court's finding that Thiry chose slate primarily for aesthetic reasons.

C. Flashing

Crow Roofing contends the court erred in finding that the flashing where the roof meets the gutter line is "insufficient to protect the roof from weather and foreign debris and must be reworked." The court's finding is supported by the testimony. Contrary to Crow Roofing's argument, Given did not base his opinion on the inability to determine whether an ice and water shield had been installed. Given testified that because the flashing at the eaves is too short and does not "lap the 3 inches as is discussed in the National Roofing Contractor[']s Association guidelines," there is a risk of water infiltration. Crow Roofing claims it was necessary to install the eave flashing as it did because of Thiry's intent to replace the gutters. But the plan to install gutters did not change Given's opinion that installation of the eave flashing was deficient. Substantial evidence supports the court's finding that the eave flashing installation was a breach of the contract.

D. Transitional Flashing

Crow Roofing also challenges the court's finding that it breached the contract by using wood siding rather than copper flashing for the changes in the

slope of the roof. According to the testimony, the roof has a steep pitch, with an angle of approximately 45 degrees. The angle of the slope lessens as it approaches the gutter line. Where the roof's slope changes, transitional flashing is necessary to "create a weatherproof installation." While the contract required copper to be used for all flashing, Crow Roofing used "bevelled cedar siding" instead of copper flashing for the transitions. The court found:

> The contract calls for copper flashing on the entire roof. Contrary to this term and condition of the contract, Plaintiff employed a method of dealing with the subject roof's transition in pitch as it approaches the gutter line. The contract between the parties requires the use of copper transition flashing under the slate at the pitch transition on the roof. In spite of this requirement, Plaintiff chose to employ wooden shims under the tiles instead of the copper flashing, called for in the contract.

Given testified that bevelled cedar siding was not flashing, and according to the International Residential Code, flashing is required at transitional points. Given also testified that he did not believe cedar siding would protect the roof at the slope transitions, and noted that the wood was already cracked in places. Although Crow Roofing points to Given's testimony that the Code does not specify the material to be used for flashing, it is undisputed that the written contract required copper flashing. Substantial evidence supports the finding that the use of cedar siding was a breach of the contract requirement to use copper flashing.

Crow's position at trial was the contract did not specifically address transitional flashing and the parties orally modified the contract by agreeing to

use wood instead of copper flashing. Crow Roofing's project supervisor Charles Trichler testified that Thiry did not want exposed copper to be used for transitional flashing. Thiry flatly denied entering into an agreement with Trichler to use wood instead of copper flashing for the slope. Thiry said Crow Roofing employees mentioned some problem regarding the slope that he directed them to fix, but denied having any discussions about the material to be used for the slope transitions. Thiry testified that he expected copper flashing to be used as provided for in the contract.

The findings and conclusions do not specifically address the question of whether the parties orally modified the contract. However, before closing argument, the court noted that the written contract requiring copper to be used for "all flashings" was unambiguous, and asked Crow Roofing to provide legal authority if it was arguing that the "all flashings" provision of the contract was orally modified. The court also noted that it "had not heard any testimony that would indicate that the buyer had any understanding that what he was talking about was flashing in that context."

While parties may modify a contract by subsequent agreement, an oral modification to a written contract must be shown by clear and convincing evidence. Ebling v. Gove's Cove, Inc., 34 Wn. App. 495, 499, 663 P.2d 132 (1983), See also Tonseth v. Serwold, 22 Wn.2d 629, 644, 157 P.2d 333 (1945); Dinsmore Sawmill Co. v. Falls City Lumber Co., 70 Wash. 42, 44, 126 P. 72 (1912). Here, the record shows that the court found Thirty's testimony credible

and decided the evidence did not support the conclusion that there was an oral agreement to amend the "all flashings" provision of the contract.

II. Offset

The trial court awarded Thiry an offset of $57,000 for the cost of repairs. Crow Roofing contends the evidence does not support the court's determination that $57,000 is "[a] reasonable cost of repair . . . to remedy known defects." Crow Roofing contends Given's testimony regarding the cost of repair lacks foundation because he relied upon a cost estimate prepared by a contractor with experience in working on slate roofs and estimating the cost of slate roofs. Crow Roofing objected to Given's testimony about the cost of repairs as hearsay. The court ruled that it was reasonable for Given to rely on the opinion of contractor and cost estimator Bob Westlake, and Crow Roofing's objections went to the weight and not the admissibility of the evidence.

Given testified that while he had experience with slate roofs, his experience as a cost estimator was not specific to slate roofs. Given said that he arrived at the cost of repair figure of $57,000 through consultation with Bob Westlake of Alpha Pacific Roofing. Westlake has experience working on and estimating the cost of slate roof projects.[5] Given testified that Westlake visited the site two times and that he spoke to Westlake several times about the cost to repair the roof. Given testified that after Westlake sent him an estimate to repair

[5] Westlake did not testify at trial. Thiry planned to call him as a witness, and then decided not to. Crow Roofing stated it had subpoenaed Westlake but did not call him to testify at trial. Crow Roofing also stated that it would offer portions of his deposition testimony, but did not do so.

the roof, Given provided comments, and based on those comments, Westlake revised the estimate.[6] Given also testified that the estimate was reasonable based on his own observations of the roof, and his belief was that when portions of the roof were removed, additional problems would be discovered.

We review the decision to admit expert testimony for abuse of discretion. Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 683, 15 P.3d 115 (2000). Expert testimony is admissible if the witness's opinion is based on information reasonably relied on in his profession, and his testimony is helpful to the trier of fact. Reese v. Stroh, 128 Wn.2d 300, 306, 907 P.2d 282 (1995); ER 702. An opinion based on the opinion of another expert is admissible, as long as the testifying expert "reasonably relied" on that opinion. ER 703; 5B Karl B. Tegland, Washington Practice: Evidence § 703.6. Below, Crow Roofing did not cite ER 703 or object to Given's expert testimony on the grounds that he could not have reasonably relied on Westlake's opinion.

The trial court did not abuse its discretion in admitting Given's testimony as to the cost of repairs. The record establishes reasonable reliance on Westlake's cost estimate.[7]

In the alternative, Crow Roofing claims that the offset amount is

[6] Westlake's report was admitted, not for the truth of the matter asserted, but to show that Given reviewed it and relied upon it in forming his opinion.

[7] Crow Roofing also argues that the court should have adopted its cost analysis figure of $9,989. However, the witnesses who prepared Crow Roofing's estimate, Vares and Trichler, did not testify about the costs of repair. The witnesses were precluded from testifying about costs because Crow Roofing did not timely disclose its intent to offer their testimony on that subject.

disproportionate to the loss in value sustained by Thiry. In breach of construction contract claims, a party may recover the reasonable cost of remedying the defects if the cost is not clearly disproportionate to the probable loss in value to the party. Eastlake Constr. Co., Inc. v. Hess, 102 Wn.2d 30, 46, 686 P.2d 465 (1984) (adopting proportionality rule of Restatement (Second) of Contracts § 348 (1981)).

However, the proportionality rule "does not require the trial court to measure the loss in value caused by the breach, but only to determine whether the cost to remedy the defect is clearly disproportionate to the owner's loss." Panorama Village Homeowners Ass'n v. Golden Rule Roofing, Inc. 102 Wn. App. 422, 428, 10 P.3d 417 (2000). Once the injured party has established the cost to remedy the defects, the contractor bears the burden of producing evidence challenging the cost of repair, including providing the trial court with evidence to support an alternative award. Panorama Village, 102 Wn. App. at 428.

But because here, the court granted Crow Roofing's motion in limine to preclude any evidence of diminution of value, there was no evidence of loss in value to Thiry. Thus, although Crow Roofing asserts on appeal that the court should have reduced the award based on a comparison of the cost of repair and the diminution of value, there was no evidence to establish that the cost to remedy the defects are "clearly disproportionate" to Thiry's loss. Eastlake, 102 Wn.2d at 47.

III. Prejudgment Interest

Crow Roofing contends the trial court erred in refusing to award prejudgment interest. "The award of prejudgment interest is based on the public policy that a person retaining money belonging to another should pay interest on that sum to compensate for the loss of the money's 'use value.'" Buckner, Inc. v. Berkey Irr. Supply, 89 Wn. App. 906, 916-17, 951 P.2d 338 (1998) (quoting Hansen v. Rothaus, 107 Wn.2d 468, 473, 730 P.2d 662 (1986)). Awarding prejudgment interest prevents unjust enrichment. Polygon Northwest Co. v. American Nat. Fire Ins. Co., 143 Wn. App. 753, 793, 189 P.3d 777, rev. denied, 164 Wn.2d 1033, 187 P.3d 1184 (2008).

Prejudgment interest is allowed if the amount claimed is liquidated or the amount due can be calculated by computation to a fixed standard contained in the contract. Prier v. Refrigeration Eng'g Co., 74 Wn.2d 25, 33, 442 P.2d 621 (1968). A liquated claim is established "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion." Prier, 74 Wn.2d at 32.

The existence of a dispute over the amount due does not alter the character of a claim as being liquidated or unliquidated. Prier, 74 Wn.2d at 33. The question is whether the amount can be calculated with exactness, not whether the merits of the claim are certain. Prier, 74 Wn.2d at 33. Likewise, the fact that a defendant is partially successful in reducing his share of liability for the plaintiff's liquidated damages does not render the claim unliquidated.

Hadley v. Maxwell, 120 Wn. App. 137, 144, 84 P.3d 286 (2004).

Crow Roofing claims that under Mall Tool Co. v. Far West Equip. Co., 45 Wn.2d 158, 170, 273 P.2d 652 (1954), it is entitled to prejudgment interest on the remaining contract balance, approximately $40,343.[8] Under Mall Tool, if the amount of a liquidated claim is reduced by a related unliquidated counterclaim, interest is allowed on the amount remaining after setoff. The theory is that the plaintiff is only entitled to interest on funds it is wrongfully deprived of during the period of default. Mall Tool, 45 Wn.2d at 177-78. The Mall Tool exception applies in the following circumstances:

> This rule is applicable only when the amount to which a defendant is entitled as a counterclaim or setoff is for defective workmanship or other defective performance by the plaintiff, of the contract on which his liquidated or determinable claim is based, of a character such that the award of damages as compensation is regarded as constituting either a reduction of the amount due the plaintiff or a payment to him. This is on the theory that the plaintiff is entitled to interest only on the amount of which he has been deprived of the use during the period of default.

Mall Tool Co., 45 Wn.2d at 177.

The facts of this case fit within the Mall Tool exception. The court found that because Crow Roofing's defective work breached the contract, Thiry was entitled to an offset as requested in his counterclaim for damages to repair the roof. But under Mall Tool, Crow Roofing is entitled to prejudgment interest on the

[8] The contract balance was $102,416.00. The Thirys' offset was $57,000 plus 8.9% sales tax, for a total of $62,073. $62,073 subtracted from $102,416 equals $40,343.

remaining liquidated amount of $40,343.83.[9] The trial court erred in refusing to award prejudgment interest to Crow Roofing on the contract balance and ruling that prejudgment interest was "inappropriate" because the homeowners had a legitimate counterclaim.

IV. Attorney Fees

Crow Roofing also challenges the award of attorney fees to Thiry. Crow Roofing argues the court erred in concluding that Thiry was the substantially prevailing party because (1) Thiry sought damages to replace the roof, but recovered only the cost of repair, and (2) Thiry is liable for the remaining amount due under the lien.

A trial court has discretion to award reasonable attorney fees incurred by the prevailing party in a lien foreclosure action under the mechanics' and materialmen's liens statute, RCW 60.04.181(3).[10] Lumberman's of Wash., Inc. v.

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[9] Thiry contends that Crow Roofing is not entitled to prejudgment interest on the contract balance because the total of the offset amount $62,073, together with the amount paid in the insurance carrier for water damage claims, $45,000, is greater than lien amount of $102,416. This argument was not raised below and cannot be asserted for the first time on appeal. Sourakli v. Kyriakos, Inc., 144 Wn. App. 501, 509, 182 P.3d 985 (2008), rev. denied, 165 Wn.2d 1017 (2009). Nevertheless, as Crow Roofing points out, the settlement with Thiry's insurance carrier should not be treated as a counterclaim that the homeowners prevailed on because Crow Roofing expressly settled the claim without admitting liability, and all claims regarding the interior water damage were dismissed.

[10] RCW 60.04.181(3) provides, in part:

> (3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

Barnhardt, 89 Wn. App. 283, 291-92, 949 P.2d 382 (1997). Whether a party is a "prevailing party" is a mixed question of law and fact that we review under an error of law standard. Eagle Point Condo. Owners Ass'n v. Coy, 102 Wn. App. 697, 713, 9 P.3d 898 (2000).

The question as to which party substantially prevailed is often subjective and difficult to assess. Marassi, 71 Wn. App. at 917. As a general rule, the prevailing party is one who receives an affirmative judgment in its favor. Riss v. Angel, 131 Wn.2d 612, 633, 934 P.2d 669 (1997). But if neither party wholly prevails, the determination of who is the substantially prevailing party depends on the extent of the relief accorded. Transpac Development, Inc. v. Oh, 132 Wn. App. 212, 217-19, 130 P.3d 892 (2006); Marine Enter., Inc. v. Sec. Pac. Trading Corp., 50 Wn. App. 768, 772, 750 P.2d 1290, (1988). In Marassi, we concluded that where multiple and distinct claims were at issue, the trial court should take a "proportionality approach." Marassi, 71 Wn. App. at 917. But if both parties prevail on major issues, both parties bear their own costs and fees. Phillips Bldg. Co., Inc. v. An, 81 Wn. App. 696, 702, 915 P.2d 1146 (1996).

Here, Crow Roofing filed a lien for the balance due on the contract of $104, 416.83, plus prejudgment interest. The court awarded Thiry repair damages of $57,000 plus sales tax on his claim of defective workmanship, for a total of $62,073. Because we reverse the refusal to award prejudgment interest on the remaining balance owed to Crow Roofing, on remand the court should determine whether either party is the substantially prevailing party entitled to

attorney fees or if because both parties prevailed on major issues, each party should bear its own fees and costs.[11]

Because substantial evidence supports the trial court's findings and conclusions we affirm but reverse the trial court's refusal to award prejudgment interest and the remaining amount owed as the award of attorney fees. On remand, the court shall award prejudgment interest and determine whether either party is entitled to an award of attorney fees.

Schindler, J.

WE CONCUR:

Appelwick, J.

Cox, J.

[11] If the court decides either party is the substantially prevailing party, it must engage in a proportionality analysis under Marassi. Marassi, 71 Wn. App. at 917. See also Transpac, 132 Wn. App. at 217-19. Thiry contends that the settlement funds paid to Vigilant Insurance should be taken into account in determining which party substantially prevailed. However, all claims against Crow Roofing based on interior water damages were dismissed, and Crow Roofing was fully released, expressly without liability. See Roberts v. Bechtel, 74 Wn. App. 685, 687, 875 P.2d 14 (1994) (reversing fee award under RCW 4.84.185 as barred by settlement agreement where parties stipulated to dismissal of claims "without costs).